

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of New Century Telecom, Inc., (U-5912-C) for Approval of Stock Purchase Agreement and Related Transfer of Control.

Application 02-10-007
(Filed October 8, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING PROVIDING
NOTICE OF THE JUDGE'S INTENT TO PREPARE A DRAFT OPINION
THAT DENIES THE APPLICATION AND IMPOSES A FINE OF \$25,000**

1. Summary

This ruling provides notice that the assigned Administrative Law Judge (ALJ) intends to prepare a draft opinion for the Commission's consideration that recommends the following: (1) denial of Application (A.) 02-10-007 for authority to transfer control of New Century Telecom (NCT), and (2) fining NCT \$25,000 for violations of Public Utilities Code Section 854¹ and Rule 1 of the Commission's Rules of Practice and Procedure (Rule 1). NCT may file a pleading regarding the ALJ's intended course of action by no later than January 14, 2005.

2. Background

On March 31, 2003, control of NCT was transferred without prior authority from the Commission.² The unauthorized transfer of control violated Section 854 which states, in relevant part, as follows:

¹ All statutory references are to the Public Utilities Code.

² Amendment to A.02-10-027 filed on May 13, 2004, p. 2.

No person or corporation...shall merge, acquire, or control...any public utility...doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

On March 1, 2004, the assigned ALJ issued a ruling that directed NCT to respond to the following inquiry:

Are there any complaints alleging fraud or significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, or currently pending at, the California Public Utilities Commission (Commission), the Federal Communications Commission (FCC), or other state commissions? If so, please identify and describe all such complaints.

NCT responded as follows on May 13, 2004:

To NCT's knowledge, there have never been any complaints alleging fraud or significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, nor are currently pending at, the California Public Utilities Commission (Commission), the Federal Communications Commission (FCC), or other state commissions.

At the time NCT submitted the above response on May 13, 2004, NCT was being investigated by the Florida Public Service Commission (Florida PSC) for significant wrongdoing. Relevant documents obtained from the Florida PSC are appended to this Ruling. These documents demonstrate that NCT knew on May 13, 2004, that it was being investigated by the Florida PSC for significant wrongdoing. Thus, it appears that NCT knowingly made a false statement when it informed the Commission that NCT had no knowledge of any pending complaints against NCT alleging significant wrongdoing.

Making a false statement to the Commission is a violation of Rule 1, which states as follows:

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; **and never to mislead the Commission or its staff by an artifice or false statement of fact or law.**
(Emphasis added.)

3. Discussion

In light of NCT's apparent violations of Section 854 and Rule 1, the current owner of NCT, who acquired NCT without Commission authorization, does not appear to be fit to own and operate a public utility in California. Accordingly, it is the intent of the assigned ALJ to draft an opinion for the Commission's consideration which recommends that A.02-10-007, which seeks approval to transfer control of NCT to its current owner, be denied. NCT will be directed to make arrangements for the orderly transfer of its California customers to other carriers in a manner consistent with Commission requirements or, alternatively, to file a new application to transfer control of NCT to owners that are fit to provide utility service in California.

Violations of Section 854 and Rule 1 are subject to monetary penalties pursuant to Section 2107, which states as follows:

Any public utility which...fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense.

The ALJ's draft opinion will recommend a total penalty of \$25,000 -- \$5,000 for violating Section 854 and \$20,000 for violating Rule 1.

NCT may file a pleading regarding the matters described previously in this Ruling. The pleading may also request an evidentiary hearing. If NCT requests an evidentiary hearing, the pleading must identify and describe the specific issues of fact that will be addressed at the hearing. The pleading shall be filed and served no later than January 14, 2005. NCT shall provide an electronic copy of the pleading via email (tim@cpuc.ca.gov) to the assigned ALJ in Microsoft Word.

Therefore, **IT IS RULED** that:

1. Notice is hereby given that the assigned Administrative Law Judge intends to prepare a draft opinion that denies Application 02-10-007 and imposes a fine of \$25,000 for the reasons set forth in the body of this ruling.

2. New Century Telecom, Inc., (NCT) may file by January 14, 2005, a pleading regarding the matters addressed in the body of this Ruling. The pleading may also request an evidentiary hearing. If NCT requests an evidentiary hearing, the pleading must identify and describe the specific issues of fact that will be addressed at the hearing. NCT shall provide an electronic copy of the pleading via email (tim@cpuc.ca.gov) to the assigned ALJ in Microsoft Word.

Dated December 21, 2004, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Providing Notice of the Judge's Intent to Prepare a Draft Opinion that Denies the Application and Imposes a Fine of \$25,000 on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated December 21, 2004, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

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A.02-10-007 TIM/tcg

[Kenney Appendices A-D](#)